

A Thought on ‘Resolving’ the Kenya-Somalia Maritime Boundary Dispute

By G. Odera-Outa*

A seemingly innocuous headline in a leading newspaper proclaimed a “snub” for Kenya in its on-going maritime boundary dispute with neighbouring Somalia.

It emerges that the reporting may have largely been based on a self-glorifying tweet from one senior official, but to my knowledge, it ruffled feathers all the same; notably from those directly ceased of the matter.

Understandably so!

Territorial boundary matters are quite sensitive. Even emotive. There are major ‘national sovereignty’ questions implicated. Both the known and previously unknown resources lie beneath the oceans; not to mention the unharnessed potential of lakes and other inland water sources, these days referenced as the ‘Blue Economy.’ Instructively, Kenya hosted the first-ever global conference only last November to rally world attention to the untapped potential of the ‘Blue Economy.’ Coastal states; including those usually designated as Small Island Developing States (SIDs) are now all the wiser. There is a steady stream of sentiment against “Illegal, Unreported and Unregulated” (IUU) fishing. Territorial integrity in order to secure ‘the Blue Economy’ is no longer a small matter. Somalia, notwithstanding close to three-decades of fragility and other pressing internal priorities has the temerity to put up a fight over the maritime boundary.

Without suggesting censorship, it is worth noting that sovereignty disputes can easily spark an overwhelming fire. As premier during the highly-charged World War two (WWII), sir Winston Churchill famously won! It was not so much because Britain was any superior in military terms, but rather, because of the high octane rhetoric the Premier perfected. The joke is sometimes told, that even as premier, Churchill fired on ‘all four cylinders’ via parliament and through radio about the imaginary of ‘British invincibility’ and how she would win the war “on land, sea and the skies,” he was actually lying in bed enjoying some good old whisky alongside the trademark cigars!

Yet, rallying the nation together and instilling un-paralleled fortitude and bravado among “the allied forces”, premier Churchill did. The Media was a venerated ally in that victory. National interest was supreme!

Since that UK reality, the norm has been to be somewhat ‘cautious.’ There remains a big risk; of Media fanning full-scale wars likely to be promoted on the basis of half-baked truths and propaganda. Social Media now makes all this a trifle easier. What if the 100,000 square Kilometres (or so) of the Indian ocean triangle off the coastline of Kenya and Somalia are that precious? The point is that it makes it an extremely delicate matter and there are obviously many desperate groups and private interests only waiting in the wings; perhaps keen to see the persistence of fragility. National fragility seems to create the perfect climate for predatory tendencies for which there is no shortage of examples in Africa and elsewhere.

It has been remarked that the next frontier of war world over will be over water as a resource. This prophesy was pronounced long before the full potential of the ‘Blue Economy’ became

a subject of the greater global concern that it is today. The International Court of Justice (ICJ) has been hearing and adjudicating an ever-growing list of more or less similar disputes; some whose origins were small-time conflicts between local communities. Take the much-reported Hungary versus Slovakia (Gabčíkovo–Nagymaros) over the alleged construction of a dam on the Danube river which has to its credit established some of the most-cited global norms around water and Sustainable Development in its entirety. On the other hand, the Argentina Vs Uruguay dispute over the construction of a ‘pulp mill’ near the Uruguay river protracted for close to a decade and frequently threatened full scale war. The US Vs Canada (‘Trail Smelter’); US Vs Mexico over the Colorado river, as well as Germany Vs Switzerland over the Rhine’s pollution are much older cases in this general squabbling over the precious water resource.

Africa too has had its own fair share of cases triggered by both maritime and land boundary disputes (Burkina Faso and Mali; Burkina Faso and Niger; Cameroon and Nigeria; Botswana and Namibia; Libya and Chad; Libya and Tunisia). Seriously speaking, any careless reporting of the Kenya-Somalia dispute could trigger a ‘Pandora’s box’ within the broader Eastern African region and the horn of Africa at large. Zanzibar could just wake up with a new claim!

Although the UN Convention for the Law of the Sea (UNCLOS, 1982) does exist, the one undeniable fatality of International Law is always that it does not have an ‘*overarching enforcement mechanism*’. To this writer, it means in simple terms, that whether the adversarial states like it or not, dialogue and compromise remain to be the best option out.

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